

CRS Report for Congress

The Federal Funding Accountability and Transparency Act: Implementation and Proposed Amendments

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The Federal Funding Accountability and Transparency Act: Implementation and Proposed Amendments

Summary

On September 26, 2006, President Bush signed the Federal Funding Accountability and Transparency Act (FFATA) into law (P.L. 109-282). In an attempt to expand oversight of federal spending, including earmarks, the new law required the Office of Management and Budget (OMB) to establish a publicly available online website that provides access to information about entities that are awarded federal grants, loans, contracts, and other forms of assistance. Federal agencies award over \$880 billion dollars annually in three of the primary categories of financial assistance that are included in the database — \$470 billion in grants, \$381 billion in contracts, and \$29 billion in direct loans. The FFATA was endorsed by leaders of both parties and an array of business, union, and watchdog organizations.

OMB launched the FFATA-mandated website, USAspending.gov, on December 13, 2007. While the website has been praised as a step toward a worthy objective — enhancing the transparency of government expenditures — government officials and members of the public have expressed concern that issues surrounding its implementation have not been adequately addressed. In particular, many observers question the reliability of information taken from the Federal Assistance Award Data System (FAADS) and the Federal Procurement Data System - Next Generation (FPDS-NG), which are important sources of information for USAspending.gov. They note that information in FAADS and FPDS is often incomplete and inaccurate, and therefore might limit transparency. Some observers also believe that the cost of establishing and maintaining the new website might grow as agencies seek to improve data quality and collect new information on subawards.

This report initially discusses the background of the FFATA. It then discusses the act's provisions, noting what types of assistance are part of the new website, the primary sources of the data, and deadlines for implementation. The report then identifies and discusses issues that have been raised regarding the act that might affect its implementation. Finally, it examines legislation proposed in the 110th Congress (S. 3077) that would significantly expand the information accessible through USAspending.gov. This report will be updated as events warrant.

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The Federal Funding Accountability and Transparency Act: Implementation and Proposed Amendments

On September 26, 2006, President Bush signed into law S. 2590, the Federal Funding Accountability and Transparency Act (FFATA; P.L. 109-282).¹ According to supporters of the new law, the FFATA was an attempt to reduce “wasteful and unnecessary spending” by the federal government, including spending on funds earmarked for special projects.² To that end, the legislation required the Office of Management and Budget (OMB) to establish a publicly available website that would allow users to search for detailed information about entities that are awarded federal grants, loans, contracts, and other forms of assistance. Using the website, supporters asserted, a citizen or watchdog group would be able to easily determine how much money was given to which organizations, and for what purposes.³ The premise of the legislation was that, by making the details of federal spending available to the public, government officials would be less likely to fund projects that might be perceived as wasteful. Supporters of the legislation also suggested that the website would give citizens the opportunity to better understand how the government distributes funds, and enable the public to become more involved in the discussion of federal spending priorities.⁴

Three of the primary categories of federal expenditures and obligations to be included in the database — federal grants, loans, and contracts — represent a significant element of federal spending. According to the most recently published Consolidated Federal Funds Report (CFFR), federal agencies award over \$880 billion in those three categories of financial assistance alone: \$470 billion in grants, \$381

¹ The White House, Office of the Press Secretary, “President Bush Signs Federal Funding Accountability and Transparency Act,” press release, Sept. 26, 2006, available at [<http://www.whitehouse.gov/news/releases/2006/09/20060926.html>].

² Testimony of Sen. John McCain, in U.S. Congress, Senate Subcommittee on Federal Financial Management, Government Information, and International Security, *Federal Funding Accountability and Transparency Act*, hearing on S. 2590, 109th Cong., 2nd sess., July 18, 2006, at [http://hsgac.senate.gov/_files/071806McCain.pdf]. For information on other recent earmark reform proposals, see CRS Report RL33397, *Earmark Reform Proposals: Analysis of Latest Versions of S. 2349 and H.R. 4975*, by Sandy Streeter.

³ Testimony of Sen. Tom Coburn, *ibid.*

⁴ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Federal Financial Accountability and Transparency Act of 2006*, report to accompany S. 2590, 109th Cong., 2nd sess., S.Rept. 109-329, at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:sr329.109.pdf].

billion in contracts, and \$29 billion in direct loans.⁵ OMB launched the database, USAspending.gov, on December 13, 2007. While the new database has been praised as a step toward a worthy objective — enhancing the transparency of government expenditures — government officials and members of the public have expressed concern about the quality of the data it provides, the ability of the database to identify earmarked awards, and the potential cost of enhancing and expanding data collection efforts.

This report initially discusses the background of the FFATA. It then discusses the act's provisions, noting what types of assistance are part of the new website, the primary sources of the data, and deadlines for implementation. The report then identifies and discusses issues that have been raised regarding the act that might affect its implementation. Finally, it examines legislation proposed in the 110th Congress that would significantly expand the information accessible through USAspending.gov.

Background

S. 2590 received extensive bipartisan support at each stage of the legislative process. In the Senate, the bill was introduced with bipartisan sponsors, voted unanimously out of committee, and passed by unanimous consent on April 6, 2006. The legislation was ultimately cosponsored by 47 Senators, including then-Majority Leader Bill Frist and then-Minority Leader Harry Reid. In the House, S. 2590 was passed by voice vote on September 13, with members of both parties speaking in support of the Senate bill and none speaking against it.⁶ The White House did not issue a Statement of Administrative Policy on S. 2590, but President Bush did express his support in a press release distributed the same day the bill was enrolled, making it apparent he would sign the measure once he received it.⁷ As noted previously, the President signed S. 2590 on September 26, 2006.

According to Senator Tom Coburn, the bill's original sponsor, S. 2590 was endorsed by over 150 organizations with a wide range of political leanings.⁸ The Senator's list of supporters included representatives of private enterprise, such as the U.S. Chamber of Commerce; unions, like the American Federation of State, County, and Municipal Employees; media groups, such as the American Society of

⁵ U.S. Census Bureau, *Consolidated Federal Funds Report for Fiscal Year 2005*, September 2007, p. v, at [<http://www.census.gov/prod/2007pubs/cffr-05.pdf>].

⁶ *Congressional Record*, daily edition, vol. 151, (September 13, 2006), pp. H6498-H6501.

⁷ The White House, Office of the Press Secretary, "President Bush Applauds House Passage of S. 2590, the Federal Funding Accountability and Transparency Act of 2006," press release, Sept. 13, 2006, at [<http://www.whitehouse.gov/news/releases/2006/09/print/20060913-4.html>].

⁸ Senator Coburn's office provided CRS with the list of supporters. Over 80 leaders of supporting groups signed "An Open Letter to Majority Leader Frist: Bring S. 2590 to the Floor for a Vote!" dated Sept. 6, 2006. See [<http://www.cq.com/flatfiles/editorialFiles/budgetTracker/reference/docs/20060706database-ltr.pdf>].

Newspaper Editors; and government watchdog organizations, like OMB Watch. As evidence of the unusual alliance in support of S. 2590, the list indicated that both People for the Ethical Treatment of Animals (PETA) and Gun Owners of America supported the bill, as did both the National Gay and Lesbian Task Force and the Traditional Values Coalition.

Overview of the Act

The website required in the act was to be implemented in two phases. By January 1, 2008, the new website was required to provide access to information on entities that were awarded funds directly from the federal government. Entities covered in the first phase of implementation include corporations, associations, partnerships, sole proprietorships, limited liability companies, limited liability partnerships, states, and localities. By January 1, 2009, by law, the website must include access to information on subgrantees and subcontractors that receive federal funds through a primary award recipient. The act excluded individual recipients of federal assistance, and organizations with less than \$300,000 in total income were not required to report on subawards.⁹

Consistent with the objective of providing to the public comprehensive information on federal financial assistance, virtually all categories of awards are ultimately to be covered by the database, including grants, contracts, subgrants, subcontracts, and loans. Two special provisions addressed particular types of transactions: individual transactions of less than \$25,000 are exempt, and credit card transactions were excluded until October 1, 2008.

To achieve greater transparency, the act required the website to provide the following information about each federal award:

- Name of entity receiving award
- Amount of award
- Type of award (e.g., grant, loan, contract)
- Agency funding award
- A North American Industry Classification System (NAICS) code for contracts or a Catalog of Federal Domestic Assistance (CFDA) number for grants and loans¹⁰

⁹ Entities with less than \$300,000 might be required to report on subawards in the future if the Director of OMB determines this requirement is not unduly burdensome to those entities.

¹⁰ The Census Bureau assigns an NAICS code to each business establishment for the purposes of collecting and analyzing statistical data on the U.S. economy. NAICS codes are two to six digits long, with each digit representing information about the economic sector in which the establishment conducts the largest portion of its business. CFDA numbers are assigned by the General Services Administration (GSA) to all federal domestic assistance programs, including grants and loans. A CFDA number usually has five digits, where the first two digits represent the federal agency and the last three digits indicate the specific

(continued...)

- Program source
- Award title that describes the purpose of the funding
- Location of recipient
- City, state, congressional district, and country in which award performance primarily takes place
- Unique identifier for entity receiving award and of the parent entity of recipient, if one exists
- Any other information specified by OMB

The act required that the website permit users to (1) conduct a search of federal funding by any of the data elements listed above, and (2) determine the total amount of federal funding awarded to an entity by fiscal year. In addition, the act stipulated that the website must provide information in a downloadable format, and that agencies must post new information to the website within 30 days of making an award.

Three major financial assistance databases were identified in the act as likely sources of information for the new website — the Federal Procurement Data System-Next Generation (FPDS-NG), the Federal Assistance Award Data System (FAADS), and Grants.gov.¹¹ According to the act, a user must be able to access information from these databases directly through the website. The act was explicit on this point: it was not acceptable merely to provide links to these or other databases, because that would force users to search for information at different websites.

As previously noted, the act did not require information on subcontractors and subgrantees to be included in the database until January 1, 2009. The delay reflected the fact that information on subrecipients was not collected consistently across federal agencies and programs. To address existing gaps in the data on subawards, the act required OMB to implement a pilot program that tested the feasibility of having primary recipients provide information on their subgrantees and subcontractors. There was a provision in the legislation that allowed federal award recipients and subrecipients to be reimbursed for the costs associated with collecting and reporting data on subrecipients. The act also specified that any requirements for collecting data on subawards made by state and local governments under block and formula grants be cost-effective. According to the Congressional Budget Office

¹⁰ (...continued)
program for which the agency is providing funding.

¹¹ The Federal Procurement Data System-Next Generation (FPDS-NG) is a database of federal contracts maintained by GSA, and the Federal Assistance Award Data System is a database of federal grants maintained by the Census Bureau. Grants.gov is part of the E-Government initiative, and it permits grant seekers to find, apply for, and manage federal grants through a single Web portal. All entities that apply for federal assistance through Grants.gov are assigned a unique identifier known as a Data Universal Numbering System (DUNS) number. Complex entities, such as state or local governments, might have multiple DUNS numbers, making it difficult, at times, to link subunits to the parent entity.

(CBO), no unfunded mandate would be placed on recipients or subrecipients for complying with the act.¹²

The act also required OMB to submit an annual report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Government Reform. The report must include data on public usage of the website, an assessment of the reporting burden on federal award and subaward recipients, and an explanation of any extension of the subaward reporting deadline.

Implementation Issues

Reliability of Underlying Data

A database of the breadth and depth contemplated by the FFATA is only as useful as the quality of the information it contains. As noted previously, the act referred to three existing databases as likely sources of information for the new public database: FAADS, FPDS-NG, and Grants.gov. USA Spending.gov draws extensively from FAADS and FPDS-NG, but it is unclear whether data from Grants.gov is also incorporated. A number of observers have expressed concern about relying on information from FAADS and FPDS-NG. Both government officials and knowledgeable members of the public describe significant weaknesses in the databases — such as incomplete and inaccurate information — that cannot be quickly corrected. These observers suggest that substantial changes in the collection, reporting, and verification of information relating to federal assistance awards would likely be necessary before FAADS and FPDS-NG might be considered reliable sources of information.

In a 2005 report, GAO noted that FPDS-NG users lacked confidence in the data provided, largely because there was no rigorous system in place to ensure the data were accurate and complete.¹³ In 2006, a panel of procurement experts attempted to use FPDS-NG in their evaluation of federal contracting operations, but reportedly found so many errors in the data that the chairman declared that “FPDS-NG is not a reliable database.”¹⁴ One reason the data are inaccurate is human error; contract information might be incorrectly entered into FPDS-NG by inexperienced users who have received minimal training.¹⁵ Moreover, agencies might vary in the degree to which they fill out the fields in the database, resulting in data of uneven quality. In one instance, FPDS-NG users reportedly complained that the database failed to consistently identify contracts related to Hurricane Katrina recovery efforts that were

¹² U.S. Congressional Budget Office, *S. 2590: Federal Funding Accountability and Transparency Act of 2006*, Aug. 9, 2006, at [<http://www.cbo.gov/showdoc.cfm?index=7483&sequence=0>].

¹³ U.S. Government Accountability Office, *Improvements Needed to the Federal Procurement Data System-Next Generation*, GAO-05-960R, Sept. 27, 2005, pp. 1-2.

¹⁴ Chris Gosier, “Contracts database short on info, long on problems,” *Federal Times*, July 31, 2006, p. 5.

¹⁵ *Ibid.*

awarded without competition.¹⁶ The problem has not been fixed, and gaps in FPDS-NG data are now evident in USAspending.gov. A January 2008 editorial stated that the new database might not provide information on whether \$70 billion in FY2007 contracts was awarded with or without competition.¹⁷

Similar problems have been reported with FAADS, the government's primary source of grant award information. In a 2006 report, GAO reviewed 86 federally funded grant programs and determined that, in the majority of cases, the administering agencies provided no data, incomplete data, or inaccurate data to FAADS over a three-year period.¹⁸ The report concluded that these problems occurred because (1) the Census Bureau lacked the resources to ensure agencies were submitting accurate and timely data, (2) agency program officials lacked knowledge of FAADS reporting requirements, and (3) agencies had not implemented sufficient oversight to ensure they were submitting accurate data. A Census Bureau official concurred with these findings, adding that a number of data elements required by the FFATA are not uniformly captured by federal agencies or grant award recipients, such as information on subrecipients and the congressional district in which federal funds are spent.¹⁹ The official also noted that agencies are currently required to update their information in FAADS on a quarterly basis, so it might take time for agencies to develop the capability to update FAADS within 30 days of making an award, as the FFATA requires.

Some members of Congress have also expressed concerns about FPDS-NG and FAADS. During floor debate of the bill in the House, one supporter cautioned that the FFATA's potential to improve oversight of federal funds, while substantial, would be largely determined by the degree to which improvements in FPDS-NG and FAADS were made during implementation.²⁰ Another supporter expressed concern that the problems with FPDS-NG and FAADS were so significant that, "if the Administration is not committed to making this legislation work, all we will get is another incomplete and hard-to-use database."²¹

After the FFATA was enacted, OMB issued a series of memoranda requiring agencies to improve the quality of their financial award data reporting. A March 9, 2007, memorandum, while not specifically referencing the FFATA, required agency Chief Acquisition Officers (CAOs) to establish procedures and responsibilities for

¹⁶ Ibid.

¹⁷ "More transparency needed into contracting data," *Federal Times* (Springfield, VA), Jan. 14, 2008, p. 22.

¹⁸ U.S. Government Accountability Office, *Rural Economic Development: More Assurance Is Needed that Grant Funding Is Accurately Reported*, GAO-06-294, Feb. 24, 2006, pp. 23-34.

¹⁹ Telephone conversation between the author and Jerry Keffer, Chief of the Federal Programs Branch, U.S. Census Bureau, Aug. 17, 2006.

²⁰ Rep. Danny Davis, "Federal Funding Accountability and Transparency Act of 2006" remarks in the House, *Congressional Record*, daily edition, vol. 151 (Sept. 13, 2006), pp. H6498-H6501.

²¹ Ibid. Rep. Henry Waxman.

verifying and validating the procurement data they submit to FPDS-NG.²² Later that same month, OMB issued a memorandum to the President's Management Council — a high-level policy task force comprising agency Chief Operating Officers — that identified the specific data elements that agencies must report and the time frames in which the data are to be submitted to meet the requirements of the FFATA.²³ On November 9, 2007, OMB issued its most comprehensive memorandum on data submission requirements under the FFATA.²⁴ This memorandum required agencies to submit a plan to OMB by December 1, 2007, that identified gaps in their data on grants, contracts, and loans, and outlined their plans to address any deficiencies. In addition, it required agencies to implement internal controls to ensure the accuracy, integrity, and timeliness of their submissions.

The reliability of agency data submissions remains a concern. Less than three months after the launch of USA Spending.gov, in December 2007, OMB criticized the quality of the data that agencies were providing. In a memorandum dated March 6, 2008, OMB called on agencies to “redouble the efforts to improve data quality, as much of the data submitted for posting to the USA Spending.gov in the past has been incomplete, untimely, and inaccurate.” A review of the website on October 3, 2008 — more than two years after the FFATA was enacted — bears out this assessment. With regard to timeliness of data, the FFATA requires award information to be posted to the website not more than 30 days after the award is made. The contract data available October 3, however, had not been updated in six weeks, while grant and loan updates ranged from August 2008 to August 2007 — meaning some agencies had not updated their assistance award data in over a year.²⁵

The lack of timely information may result in significant gaps in award data on USA Spending.gov. For example, on October 3, 2008, the website provided no FY2007 and FY2008 assistance data for two agencies: the Department of Homeland Security (DHS) and the Small Business Administration (SBA), which had combined assistance outlays in FY2006 of over \$750 billion. If assistance outlays at those two agencies were at similar levels for FY2007 and FY2008, then USA Spending.gov may be missing data for as much as \$1.5 trillion in assistance awards, just for DHS and SBA.

²² Memorandum from Paul A. Dennet, OMB Administrator, to Chief Acquisition Officers, *Federal Procurement Data Verification and Validation*, Nov. 9, 2007, at [http://www.whitehouse.gov/omb/procurement/pro_data/fpds_030907.pdf].

²³ Memorandum from Clay Johnson, OMB Deputy Director for Management, to the President's Management Council, *Reporting of Data Elements Required by the Federal Funding Accountability and Transparency Act*, Mar. 30, 2007, at [<http://www.grants.gov/assets/FFATAMemo2.pdf>].

²⁴ Memorandum from Robert Shea, OMB Associate Director, to Executive Departments and Agencies, *Guidance on Data Submission under the Federal Funding Accountability and Transparency Act*, Nov. 9, 2007.

²⁵ The agencies that had not updated their assistance award information in over a year were the Department of Homeland Security, the Department of Transportation, the Small Business Administration, the Office of Personnel Management, the Nuclear Regulatory Commission, and the Department of the Treasury.

Even when agencies did submit FY2007 or FY2008 data, it often appeared to be incomplete. On October 3, 2008, USA Spending.gov showed that the Social Security Administration (SSA) reported \$539.9 billion in assistance outlays for FY2006, but only \$38 million in FY2007. Similarly, the website showed that the Department of Agriculture reported assistance outlays of \$147.0 billion for FY2006, but only \$24.7 billion for FY2007. The Department of Housing and Urban Development (HUD) reported \$100.3 billion in assistance outlays in FY2006, but nothing for FY2007. Here again it appears that data on hundreds of billions of dollars in assistance awards are not available on USA Spending.gov, as mandated by the FFATA.

Implementation Costs

Concerns have been expressed regarding the cost of implementing USA Spending.gov. Two types of costs are at issue: the costs of implementing the act as a whole and the costs associated with the development of information on subawards.

Overall Implementation Costs. It is not known how much the initial implementation of USA Spending.gov has cost. There is no publicly available estimate, for example, of the dollar value of the time it has taken federal agency employees to collect, validate, and submit award information. It is also not known whether agencies have had to modify their internal data collection systems to obtain information not previously collected. Implementation costs may not be distributed evenly across agencies. Agencies that have reported little or no information for FY2007 or FY2008 may have found that they are further behind other agencies in terms of their ability to obtain the required assistance award data, and may have to invest more resources to meet the FFATA's reporting provisions.

Prior to enactment, CBO estimated that the FFATA would cost \$15 million to establish and maintain the new database of federal assistance between 2007 and 2011.²⁶ The CBO estimate, however, was based on OMB's assurance that "the government currently collects all of the information needed to create a comprehensive database on federal spending."²⁷ The estimate might thus reflect the cost of simply combining existing systems without fully accounting for other costs associated with improving the quality of the data in those systems. One expert familiar with FPDS-NG and FAADS said that "an enormous amount of data cleanup" will be necessary to correct inaccurate information in those systems.²⁸ Another industry observer was quoted as saying that enhancing and integrating existing data

²⁶ U.S. Congressional Budget Office, *S. 2590: Federal Funding Accountability and Transparency Act of 2006*, Aug. 9, 2006, at [<http://www.cbo.gov/showdoc.cfm?index=7483&sequence=0>].

²⁷ *Ibid.*

²⁸ Jason Miller, "Spending database takes shape: Much work to be done to create mandatory database by the 2008 deadline," *FCW.com*, July 23, 2007, at [http://www.fcw.com/print/13_25/news/103293-1.html].

sources to meet the requirements of the FFATA was a “complex” problem, and that implementing the database might exceed the \$15 million projected by CBO.²⁹

Subaward Information Costs. Prior to enactment of the FFATA, the National Association of State Auditors, Comptrollers, and Treasurers (NASACT) expressed strong reservations about the potential financial and administrative burden that the proposed reporting requirements would impose on state and local governments.³⁰ In particular, NASACT noted that collecting data on subgrantees would be “very, very costly” for state and local governments, since federal grant funds are often passed down multiple levels (e.g., a state receiving federal assistance gives a subgrant to organization A, which in turn gives a subgrant to organization B). Additional costs might be incurred under the bill, NASACT said, if state and local grant recipients were required to modify their financial systems to collect and report any other new information. After S. 2590 was amended to include the pilot program for collecting information on subgrantees, NASACT said it supported the bill with the new language, but also noted that it still believed “obtaining all the required information will be a challenge.”³¹

Some trade groups have made similar arguments regarding the cost of collecting subcontractor information. The Council of Defense and Space Industry Associations (CODSIA), for example, has reportedly stated that prime contractors do not normally collect subcontractor information at the level of detail required by the FFATA, and that doing so would become a significant administrative burden on both contractors and subcontractors.³²

The subaward reporting pilot program mandated by the FFATA was intended to identify the least burdensome and most cost-effective method for collecting and reporting data on subawards. No information from the pilot program is available yet, however, as it did not commence until October 8, 2008 — more than a year beyond the statutory deadline of July 1, 2007.³³ No explanation for the delay has been provided. After the pilot program is complete, it may provide a sense of the costs

²⁹ Jenny Mandel, “OMB says new search tool will reflect accurate spending data,” *GovExec.Com*, Sept. 14, 2006, at [<http://www.govexec.com/dailyfed/0906/091406m1.htm>].

³⁰ Letter from R. Thomas Wagner, Jr., President of NASACT, to Sen. Tom Coburn, July 5, 2006, at [http://www.nasact.org/techupdates/downloads/CRC/LOC/07_06-NASACT_coburn.pdf].

³¹ Letter from Jan I. Sylvis, President of NASACT, to Sen. Tom Coburn, Sept. 5, 2006.

³² “Contractor Groups Oppose Proposed Rule on Subcontract Reporting Pilot Under FFATA,” *Daily Report for Executives*, June 7, 2007, at [<http://pubs.bna.com/ip/BNA/DER.NSF/9311bd429c19a79485256b57005ace13/ce82937ada96f25a852572f300101015?OpenDocument>].

³³ The Grants Policy Committee (GPC) of the Chief Financial Officers Council (CFOC) is overseeing implementation of the subaward pilot program. At a Sept. 16, 2008, conference hosted by the National Grants Partnership, the chair of the pilot program said that the pilot would begin October 8 and continue for “three or four weeks,” unless it encountered complications, in which case it might be extended. A webcast of the conference may be found at [<http://www.thengp.org/>].

and technical challenges that agencies may face in collecting and reporting subaward data. The pilot will only test reporting award data from first-tier subrecipients, however, and there may be greater costs and technical challenges associated with collecting data from lower tier subrecipients, which tend to be smaller and may have less well-developed reporting systems in place.

Earmarks and “Wasteful” Spending

Although one of the stated purposes of the legislation was to enable the public to use the online database to identify congressional “earmarks,” it is unclear how users of USA Spending.gov might actually do this, since neither FAADS nor FPDS-NG collect that information. Not all grants, loans, or contracts are congressionally directed; some are at the discretion of the responsible federal agency. Unless the congressionally directed items are specifically identified as such, the website will be of limited value for purposes of earmark identification.

The FFATA also intended the website to provide the public with an opportunity to assess the worthiness of individual awards. The manner in which an award is described under the “award title” field on USA Spending.gov might lead the public to draw different conclusions about the value of a given federally funded project. For example, a project that some believe has merit might be described in a manner that puts it in an unfavorable light. In this way, award descriptions might influence the public’s perception of whether a funding action is “wasteful” or not.

Proposed Legislation to Amend the FFATA

On June 3, 2008, Senator Barack Obama, on behalf of himself and three cosponsors, introduced new legislation to expand and improve the quality of the data posted to USA Spending.gov.³⁴ S. 3077, the Strengthening Transparency and Accountability in Federal Spending Act of 2008, would amend the FFATA and require USA Spending.gov to provide new information on federal awards, including

- the same information about lease agreements that is already required for grants and contracts;
- a copy of each contract and its associated request for proposals, announcement, and scope of work;
- the highest, lowest, and median offered price among acceptable procurement bids;
- details about the amount of each contract awarded, including profit incentives and options to expand or extend a contract;
- information about the extent of competition in awarding a contract, including, when applicable, an explanation of why a contract was awarded without full and open competition;

³⁴ The three other cosponsors were Senators Carper, Coburn, and McCain. Along with Senator Obama, these three Senators were cosponsors of the FFATA.

- an indication if an award is the result of a congressionally directed spending item;³⁵ and
- a number of data elements that had been voluntarily provided by USA Spending.gov, such as the amount of non-federal matching funds required, if any, to obtain a federal assistance award.

In addition, S. 3077 would require USA Spending.gov to provide information about federal award recipients, including

- an assessment of the quality of work performed on federal awards during the previous five years;
- information about federal audit disputes and resolutions, award terminations, and suspensions and debarments;
- information about civil, criminal, and administrative actions taken against the recipient by the federal government or a state government for violation of federal or state laws or regulations related to the workplace, environment protection, fraud, securities, and consumer protections; and
- information about compliance with federal tax requirements, including whether the recipient has filed annual tax returns for the previous five years and is paying any taxes owed.

To improve the quality of data on USA Spending.gov, the bill would also require the Director of OMB to ensure that

- each agency inspector general reviews a sample of agency awards every six months to verify the accuracy of the data submitted to USA Spending.gov;
- the data posted to USA Spending.gov is audited for quality every six months;
- the website provides a simple method for the public to report errors in the data; and
- no personally identifiable information is made available through the website.

In contrast to the FFATA, which was almost universally supported when it was introduced, S. 3077 has been both lauded and criticized. The president of Americans for Tax Reform, a supporter of the bill, has argued that expanding the award information posted to USA Spending.gov as proposed by S. 3077 would be another step towards the objective of “comprehensive fiscal transparency.”³⁶ The executive

³⁵ S. 3077 uses the definition of congressionally directed spending item found in P.L. 110-81, which amends the Senate’s standing rules and therefore applies only to the Senate. It would be necessary to amend S. 3077 to include congressionally directed spending items that originate in the House. The House’s definition of a congressional earmark, which is substantively the same as the Senate definition of a congressionally directed spending item, is found in Sec. 404 of H.Res. 6.

³⁶ Letter from Grover G. Norquist, President of Americans for Tax Reform, to Senators Tom (continued...)

director of OMB Watch, another supporter, argued that enacting S. 3077 would strengthen the public's ability to hold government officials accountable for their funding decisions.³⁷

Critics have voiced concerns about making certain contract information available to the public through USA Spending.gov, a step they say could have unintended consequences. For example, S. 3077 would require the website to include information on the highest, lowest, and median offer for contract bids. A procurement expert in the private sector said that if USA Spending.gov included data on proposed contract prices — which is only one of the factors considered when awarding a contract — then government procurement officers may feel pressured to award contracts to the lowest bidder, even if the lowest bidder “can’t do the work.”³⁸ The president of a government contractor trade organization wrote in an editorial that posting information on a government website about purported contractor misconduct would be misleading to the public and unfair to contractors.³⁹ The broad scope of contractor performance information would lack a proper context, he argued, such as a metric to help the public understand the comparative severity of actions taken against a contractor. Without the proper context, he wrote, the public might presume “that all such cases represent probable or proven misconduct of a serious nature,” when some actions are routine, and other actions may result in no findings of misconduct. He questioned how making such information available to the public would improve federal procurement oversight.

The FFATA and S. 3077 also differ in that the former identified specific sources of data to use in implementation, but the latter does not. Until these data sources are identified, it will not be possible to estimate the cost and technical challenges associated with implementing S. 3077. It is not known, for example, the extent to which agencies are already collecting the data they would be required to report, the quality of that data, and the cost of collecting data not currently captured by agencies. Implementing the reporting provisions of S. 3077 may also pose technical challenges for agencies. The data that must be reported under the bill, which range from workplace discrimination to violations of the Clean Water Act, may now be located in a half dozen or more separate databases, and it is not known how difficult it would be to incorporate these databases into the USA Spending.gov search function.

³⁶ (...continued)

Carper, Tom Coburn, John McCain, and Barack Obama, June 4, 2008, at [<http://www.atr.org/content/pdf/2008/june/060408lt-obamacoburn.pdf>]

³⁷ Letter from Gary D. Bass, Executive Director of OMB Watch, to Senators Tom Coburn and Barack Obama, June 2, 2008, at [<http://www.ombwatch.org/fedspending/OCIIsupportletters.pdf>].

³⁸ Matthew Weigelt, “Obama, McCain Want Spending Transparency,” *Federal Computer Week*, June 6, 2008, at [<http://www.fcw.com/online/news/152756-1.html>]. Subpart 15.3 of the Federal Acquisition Regulation provides government-wide guidance on source selection in competitive acquisitions.

³⁹ Stan Soloway, “Fine Line between Transparency and Chaos,” *Washington Technology*, July 14, 2008, at [http://www.washingtontechnology.com/print/23_12/33117-1.html].

Concluding Observations

Although USA Spending.gov was operating before the statutory deadline, implementation of the FFATA may be considered behind schedule in that the data made available to the public remain incomplete and untimely. The effectiveness of USA Spending.gov as an oversight tool is diminished in proportion to the amount of award information it does not provide.

In addition, because the FFATA subaward pilot program was not launched by the statutory deadline, it seems unlikely that subaward information will be incorporated into USA Spending.gov by January 1, 2009, as the act requires. If the pilot program concludes in November 2008, there may not be sufficient time to address the problems identified by the pilot, particularly if the solutions involve developing new financial data collection and reporting processes. The FFATA does permit the Director of OMB to extend the reporting deadline by an additional 18 months for subawards that were passed through state, local, or tribal governments. The Director may also exempt entities with gross income from all sources of \$300,000 or less from subaward reporting requirements, until the Director determines that such reporting would not cause “undue burden” on the subaward recipients. It is possible the Director will exercise these authorities, which could delay reporting on subawards that passed through government entities until 2011, while smaller entities (those with less than \$300,000 in total income) could be exempt indefinitely.

Implementation of the FFATA could be affected by enactment of S. 3077. The new legislation would expand the information about federal assistance awards and recipients, which some observers may view as increasing transparency, a primary objective of the FFATA. In particular, S. 3077 would require USA Spending.gov to identify earmarked awards, a function that the website does not currently have. S. 3077 would also establish new rules to enhance the quality of data on USA Spending.gov, which, as previously discussed, remains an issue.

Expanding the data available through USA Spending.gov might also slow full implementation of the FFATA. Agencies and award recipients are still developing procedures that will enable them to meet the FFATA’s reporting standards, and OMB continues to address the technical challenges associated with posting data to USA Spending.gov. Some observers suggest that the requirements of S. 3077 would strain already tight agency and recipient resources, and ultimately hamper FFATA implementation.